

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 6, 2010

In the Matter of R. MYERS, Minor.

No. 295187

Genesee Circuit Court

Juvenile Division

LC No. 07-122906-NA

Before: K. F., KELLY, P.J., and WILDER and GLEICHER, JJ.

PER CURIAM.

Respondent-father appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).¹ We affirm.

I. BASIC FACTS

In June 2006, Child Protective Services (CPS) received allegations that the mother was physically abusing the minor child's half-sibling. Services were offered, but the family absconded. The case was re-opened in November 2006. In July 2007, petitioner filed a temporary custody petition after respondent and the mother allegedly engaged in acts of domestic violence and respondent accidentally shot himself in the stomach. Prior to this time, despite being offered services, respondent's participation was minimal and he had missed numerous appointments and drug screenings. The court granted petitioner's request and the child was removed from the home in November 2007. At the same time, respondent was ordered to comply with a parenting-agency agreement, which required him to (1) complete an IARC evaluation and follow the recommendations; (2) submit to random drug screening; (3) attend and complete domestic violence classes; (4) attend and complete parenting classes; (5) maintain suitable housing; (6) obtain a legal source of income; (7) attend and complete a session with CMH; and (8) submit to a psychological evaluation.

Respondent complied, in part, with this plan. He completed parenting classes, but failed to complete the domestic violence classes. Respondent missed twelve random drug screenings since November 2007 and tested positive for marijuana as late as April 2008. In June 2008, respondent was convicted for breaking and entering and was incarcerated on two separate occasions during the pendency of this case. He failed to maintain suitable housing, he never

¹ The parental rights of the child's mother were also terminated in the same order. She is not participating in this appeal.

provided employment verification, and he never completed a counseling session with CMH. Further, in February 2009, respondent overdosed on his prescription medications and had to be taken to the hospital. The trial court terminated respondent's parental rights in November 2009.

II. ANALYSIS

Respondent argues that the trial court erred because clear and convincing evidence did not establish the statutory grounds for termination and because termination was not in the child's best interests. We disagree. On appeal from a termination of parental rights proceedings, we review the trial court's findings under the clearly erroneous standard. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). Further, regard must be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*; MCR 2.613(C).

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Trejo*, 462 Mich at 355. If a statutory ground for termination is established, and the trial court finds "that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5).

A. STATUTORY GROUNDS FOR TERMINATION

Here, the trial court found clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court's findings were not clearly erroneous. Respondent was provided with services to reunite him with the minor child for over two years. Despite some success at compliance with the parent-agency agreement, however, respondent continually and consistently failed to make substantial progress on his substance abuse issues. He missed twelve drug screenings, continued to test positive for marijuana as late as April 2008, and overdosed on his prescription medications in February 2009. Further, defendant's criminality impeded his ability to secure suitable housing and a legal source of income.

Conversely, respondent posits that he did substantially comply with the parent-agency agreement and the trial court wrongly concluded that his use of prescription medications, prescribed to him by his doctor, was inappropriate. This argument does not warrant relief on appeal, as it merely relates to the trial court's special role of assessing the credibility of the witnesses and assigning weight to the evidence. See MCR 2.613(C). After reviewing the record, we have found no reason not to defer to the trial court's assessment.

Respondent also asserts that the trial court clearly erred because it relied on allegedly inadmissible evidence in making its determination, including "any" testimony of investigators or CPS workers that relied on statements of others not called to testify. In the same vein, respondent contends that no legally admissible testimony was admitted pertaining to domestic violence and the "inappropriateness" of respondent's prescription medications, and thus the trial court's conclusion was error. We cannot agree. First, respondent's argument is largely cursory. A party cannot merely announce its position and leave it to us to ferret out the facts and rationalize the basis for relief. *Sargent v Browning-Ferris Indus*, 167 Mich App 29, 32-33; 421 NW2d 563 (1988). Here, respondent fails to specify which witnesses' statements relied on by the court, constituted inadmissible hearsay. Thus, we consider this argument to be largely abandoned. However, assuming without deciding that the trial court did wrongly rely on inadmissible evidence, or the lack of any evidence thereof, we conclude that the error was harmless. Reversal is not required because admissible evidence supported the court's conclusion. See *In re Utrera*, 281 Mich App 1, 21-25; 761 NW2d 253 (2008).

The trial court did not clearly err by finding that the conditions leading to adjudication continued to exist and that respondent was without means to provide the child with proper care or custody within a reasonable time. Because we have found that clear and convincing evidence supports the trial court's finding under MCL 712A.19b(3)(c)(i), we need not address the other grounds for termination and respondent's arguments related to those grounds.

B. BEST INTERESTS

We also cannot conclude that the trial court clearly erred in determining that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). The foster care worker acknowledged that respondent's parenting time was appropriate and that the visits "were excellent." Still, the family had been receiving services as far back as June 2006 and

respondent, who at the time of the termination hearing was in a court-ordered residential program, was in no better position to care for the child. The child is entitled to permanence and stability.

The trial court did not err by terminating respondent's parental rights.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher